

REMARKS

Applicants and Applicants' attorney express appreciation to the Examiner for the courtesies extended during the recent interview held on October 7, 2004. The amendments and arguments presented in this paper are consistent with the proposed amendments and arguments discussed during the Interview.

Claims 1-43 and 46-60 are pending, of which claims 1 and 44 are independent method claims with corresponding independent computer program product claims 42 and 57, respectively. As indicated above, claims 44-45 have been canceled and claims 1, 42, 46, 57, 59, and 60 have been amended by this paper.¹

The Office Action rejected each of the pending independent claims (1, 42, 46, 57, 59, and 60) under 35 U.S.C. § 102(e) as being anticipated by U.S. Patent Application Publication No. 2003/0125057 by Pesola ("*Pesola*"), and rejected the remaining dependent claims as either anticipated under 35 U.S.C. § 102(e) by *Pesola* or under 35 U.S.C. § 103(a) as being unpatentable over *Pesola* in view of U.S. Patent Application Publication No. 2003/0036398 by Asakawa ("*Asakawa*"), U.S. Patent Application Publication No. 2003/0119524 by Carlsson ("*Carlsson*"), U.S. Patent Application Publication No. 2002/0197984 by Monin et al. ("*Monin*"), or U.S. Patent No. 6,285,680 to Steinka et al. ("*Steinka*").²

Applicants invention, as claimed for example in independent method claim 1, relates to synchronizing first and second data stores in a flexible manner considering the circumstances that exist at the time of synchronization. The method includes the first computer system determining that a data item is to be synchronized; the first computer system identifying which

¹Support for the amendments can be found throughout the Specification, and particularly at paragraphs [0023], [0041] [0047]-[0052].

²Applicants do not acquiesce the prior art status or asserted teachings of the cited art, and specifically reserve the right to challenge those asserted teaching and/or the prior art status of the cited art in the future.

of a plurality of synchronization mechanisms are available to use for synchronization; the first computer system consulting a set of one or more flexible selection rules to select a synchronization mechanism, the set of one or more flexible rules taking into consideration value, from having access to synchronized data, relative to at least one of (i) an economic cost for synchronization using each available synchronization mechanism, (ii) network security for each available synchronization mechanism, or (iii) security of the second computer system, and thereby selecting an available synchronization mechanism appropriate for the data item given the one or more flexible selection rules; and the first computer system using the selected synchronization mechanism to synchronize the data item with the second computer. Independent claim 42 recites similar limitations from the perspective of a computer program product.

Applicants invention, as claimed for example in independent method claim 46, also relates to synchronizing first and second data stores in a flexible manner considering the circumstances that exist at the time of synchronization. The method includes the first computer system determining whether to synchronize a data item by consulting a set of one or more flexible selection rules, the set of one or more flexible rules taking into consideration value, from having access to synchronized data, relative to at least one of (i) an economic cost for synchronization using each available synchronization mechanism, (ii) network security for each available synchronization mechanism, or (iii) security of the second computer system, and thereby also determining an available synchronization mechanism appropriate for the data item given the one or more flexible selection rules; and the first computer system synchronizing the data item with the second computer if the first computer system determines that the data item is to be synchronized based on the one or more flexible selection rules and each available

synchronization mechanism. Independent claim 57 recites similar limitations from the perspective of a computer program product.

Applicants invention, as claimed for example in independent system claim 59, relates to a network system. The network system includes a synchronization server comprising a data store, a networking module, and a processing module configured to access the data store as well as communicate over a network using the networking module; a mobile device having a data store, a networking module, and a processing module configured to access the data store of the mobile device as well as communicate with the synchronization server over the network using the networking module of the mobile device, the processing device of the mobile device configured to perform the following: determine that a data item is to be synchronized; identify which of a plurality of synchronization mechanisms are available to use for synchronization; consult a set of one or more flexible selection rules to select a synchronization mechanism, the set of one or more flexible rules taking into consideration value, from having access to synchronized data, relative to at least one of (i) an economic cost for synchronization using each available synchronization mechanism, (ii) network security for each available synchronization mechanism, or (iii) security of the second computer system, and thereby select an available synchronization mechanism appropriate for the data item given the one or more flexible selection rules; and use the selected synchronization mechanism to synchronize the data item. Independent claim 60 recites similar limitations from the perspective of a processing device of a synchronization server.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." MPEP § 2131. That is, "for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed

invention either explicitly or impliedly." MPEP § 706.02. Applicants also note that "[i]n determining that quantum of prior art disclosure which is necessary to declare an applicant's invention 'not novel' or 'anticipated' within section 102, the stated test is whether a reference contains an 'enabling disclosure.'" MPEP § 2121.01. In other words, a cited reference must be enabled with respect to each claim limitation. During examination, the pending claims are given their broadest reasonable interpretation, *i.e.*, they are interpreted as broadly as their terms reasonably allow, consistent with the specification. MPEP §§ 2111 & 2111.01.

Pesola discloses a system and method for synchronizing managed data. ¶ [0008]. The system and method includes establishing a communication link between first and second computing devices, automatically identifying the managed data stored on the first computing device for synchronization, automatically transferring synchronization information associated with the managed data stored on the first computing device to the second computing device over the communication link, reconciling differences in the managed data stored on the first and second computing devices based on the synchronization information to generate reconciliation information, and transferring the reconciliation information from the second computing device to the first computing device to synchronize the managed data. *Id.*

However, among other things, *Pesola* fails to teach, suggest, motivate, or enable consulting a set of one or more flexible selection rules to select a synchronization mechanism, the set of one or more flexible rules taking into consideration value, from having access to synchronized data, relative to at least one of (i) an economic cost for synchronization using each available synchronization mechanism, (ii) network security for each available synchronization mechanism, or (iii) security of the second computer system, and thereby selecting an available synchronization mechanism appropriate for the data item given the one or more flexible selection

rules, as recited in each of the pending independent claims, as recited in independent claims 1, 47, 59 and 60; or determining whether to synchronize a data item by consulting a set of one or more flexible selection rules, the set of one or more flexible rules taking into consideration value, from having access to synchronized data, relative to at least one of (i) an economic cost for synchronization using each available synchronization mechanism, (ii) network security for each available synchronization mechanism, or (iii) security of the second computer system, and thereby also determining an available synchronization mechanism appropriate for the data item given the one or more flexible selection rules, as recited in independent claims 44 and 47.

The Examiner seemed to concur with this analysis during the Interview and noted in the Interview Summary that the proposed amendments to the independent claims appear to distinguish over the cited references, and that upon receiving Applicants' formal response the Examiner will consider the references further and update the search if necessary.

Based on at least the foregoing reasons, therefore, Applicants respectfully submit that the cited art fails to anticipate or make obvious Applicants' invention, as claimed, for example, in independent claims 1, 42, 46, 57, 59, and 60. Applicants note for the record that the other rejections and assertions of record with respect to the independent and dependent claims are now moot, and therefore need not be addressed individually. Accordingly, Applicants do not acquiesce to any assertions in the Office Action that are not specifically addressed above, and hereby reserve the right to challenge those assertions in the future, if necessary or desired.

In the event that the Examiner finds any remaining impediment to a prompt allowance of this application that may be clarified through a telephone interview, the Examiner is requested to contact the undersigned attorney.

Dated this 12th day of November, 2004.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Rick D. Nydegger", written over a horizontal line.

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